

Legal Review  
Of the Interim Development Ordinance

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June 2, 2003

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Timothy McGarry, AICP, Director  
Monroe County Division of Growth Management  
2798 Overseas Highway; Suite 400  
Marathon, Florida 33050

Via Federal Express

Dear Mr. McGarry:

I have reviewed the interim development ordinance (IDO) being considered by the County and offer several comments regarding its adoption and its eventual implementation. Additionally, I have enclosed an amended IDO (hereinafter referred to as the Proposed IDO) that reflects the recommendations set forth herein.

The Florida courts, and other state and federal courts around the country, have provided insight into the elements that an IDO should address in order to pass constitutional muster. I have reviewed the proposed IDO in light of these cases and have provided the following with respect to several critical components.

First, the duration of the IDO must be "reasonable" in light of the nature, scope, and complexity of the challenge to be addressed by the planning process, plan amendments, and regulations to be developed while the IDO is in effect. *See Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302, 122 S.Ct. 1465 (2002), *Bradfordville Phipps Ltd. P'ship v. Leon County*, 804 So.2d 464 (Fla. 1<sup>st</sup> DCA 2001), *see also, Williams v. City of Central*, 907 P.2d 701, 706 (Colo. Ct. App. 1995). This is perhaps the most critical constitutional consideration when counties consider adoption of an interim ordinance.

The overwhelming weight of court decisions supports the conclusion that temporary moratoria in effect for reasonable periods of time do not result in a taking. *See Tahoe*, 535 U.S. 302, *see also, Ord. v. Kitsap County*, 84 Wash. App. 602 (1997) (upholding a six-year moratorium), *Santa Fe Village Venture v. City of Albuquerque*, 914 F. Supp. 478 (D. N.M. 1995) (thirty-month moratorium associated with effort to create national monument not a taking); *Offen v. County Council*, 96 Md. App. 526 (1993) (upholding an eight-year sewer moratorium), *Smoke Rise, Inc. v. Washington Suburban Sanitary Comm'n*, 400 F. Supp. 1369 (D. Md. 1975) (five-year moratorium on sewer hookups does not render land "worthless or useless so as to constitute a taking"); *Woodbury Place Partners*, 492 N.W.2d 258 (Minn. Ct. App. 1992) (two-year moratorium on development pending completion on interstate intersectional location study not a taking); *Capture*, 336 A.2d 30 (N.J. Super. App. Div. 1975) (four-year moratorium imposed on

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construction in flood-prone lands not a taking); *Friel v. Triangle Oil Co.*, 76 Md. App. 96, 543 A.2d 863 (Md. App. 1988) (twenty-four-month interim ordinance not a take); *Estate of Scott*, 778 S.W.2d 585 (Tex. App. 1989) (two-year interim ordinance not a taking); *Matter of Rubin v. McAlvey*, 29 App. Div. 2d 874, 288 N.Y.S.2d 519 (1968) (two-year interim development ordinance valid); *First English*, 258 Cal. Rptr. 893 (delay of thirty months not unreasonable).<sup>1</sup>

The Proposed IDO would delay issuance of ROGO and NROGO permit allocations within Tiers I & II for eighteen months, with the potential to extend its term by an additional six months. As the ordinance states on its face, the Proposed IDO is necessary to adequately plan for and implement Goal 105 of the 2010 Comprehensive Plan, Rule 28-20.100, F.A.C, and the intent and findings of the Florida Keys Carrying Capacity Study (FKCCS). County staff has prepared comprehensive reports for the Planning Commission and Board of County Commissioners (BOCC) that outline the range of issues implicated by the Smart Growth provisions of the Comprehensive Plan. In addition, the FKCCS, the provisions of which will be implemented by the IDO, represents a broad and complex range of issues that have to be addressed.

Given the breadth and complexity of these issues, the extensive geographic area affected by the Comprehensive Plan policies and the FKCCS, and the importance of receiving adequate public input prior to the adoption of permanent policies and regulations, it appears that an eighteen- to twenty-four-month moratorium would be found reasonable in duration. *See also Collura v. Town of Arlington*, 367 Mass. 881, 329 N.E.2d 733 (Mass. 1975) (noting that "with the adoption of an interim [moratorium a developer] is made aware that a new plan is in the offing and is thus able to participate in the debate over what that new plan should contain").

That said, the legality of a temporary moratorium depends significantly on what happens after it is adopted. *See Almquist v. Town of Marsham*, 245 N.W. 2d 819, 826 (Minn. 1976) (holding that "... where a municipality enacts in good faith and without discrimination, a moratorium on development which is of limited duration is valid if upon enactment, the study proceeds promptly and appropriate zoning ordinances are expeditiously adopted when it is completed."). Permanent policies, studies, and regulations implementing the Plan and the FKCCS should be pursued diligently by the County and adequate resources should be identified to effectuate their timely development and adoption. Although the six-month extension of the Proposed IDO may

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<sup>1</sup> *See also Orleans Builders & Developers v. Byrne*, 186 N.J. Super. 432, 453 A.2d 200, 208 (N.J. Super. App. Div. 1982) (observing that "under decisional law in this state as well as in other jurisdictions" moratoria "leading to formulation of a comprehensive system for the area's development which would safeguard its environment" are not compensable), *McCutchan Estates Corp. v. Evansville Vanderburgh County Airport Auth. Dist.*, 580 N.E.2d 339 (Ind. Ct. App. 1991) (nine-month delay not extraordinary as a matter of law), *Dufau v. United States*, 22 Cl. Ct. 156 (Fed. Cl. 1990) (sixteen-month delay not extraordinary as a matter of law).

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very well be necessary, it is important that the IDO not become “extraordinary” in its duration or amount to “a series of rolling moratoria” that could amount to a permanent deprivation of use. *See Tahoe*, 122 S.Ct. at 1484-85. To that end, I recommend that staff document its progress under the IDO, report its progress regularly to the Planning Commission, and address staffing and resource needs in a timely manner.

Second, an IDO must be adopted for a legitimate public purpose. Cases in this regard are numerous and generally stand for the proposition that there must be some rational connection between the adoption of the IDO and the legitimate purpose to be served by the interim measure and the policies and regulations to be developed during the interim period. *See e.g., Moviematic Industries Corp. v. Board of County Commissioners of Metropolitan Dade County*, 349 So.2d 667 (Fla. 3d DCA 1977), *c.f., Bradfordville Phipps*, 804 So.2d 464. The Proposed IDO is being adopted, *inter alia*, to preserve the environmental quality of the County’s remaining undeveloped lands, to direct future growth to those areas that have been designated as appropriate for redevelopment and infill, and to reduce urban sprawl – all pursuant to the adopted Comprehensive Plan and the FKCCS. Furthermore, the IDO is necessary to facilitate state planning mandates that implicate regional interests over a vast geographic area. *See Tahoe*, 122 S.Ct. at 1488 (“Indeed, the interest in protecting the decisional process is even stronger when an agency is developing a regional plan than when it is considering a permit for a single project.”).

Pursuant to the findings of the FKCCS and its own planning analyses, the Planning Commission has determined that issuance of additional ROGO and NROGO awards within Tiers I and II, prior to the adoption of permanent policies and regulations, will exacerbate these problems and would be contrary to the Comprehensive Plan and the FKCCS. Additionally, it has found that permanent policies and regulations should be the product of a deliberate, rational, and fair planning process that can be properly undertaken only pursuant to a limited moratorium on allocations in certain areas. Such concerns represent legitimate governmental interests on the part of the County and the IDO has been narrowly tailored, both in duration and scope, to advance these particular interests. *See Gilbert v. State of California*, 218 Cal. App. 3d 234 (Cal. 1990).

Third, we must consider whether the Proposed IDO would burden affected property owners to such a degree as to result in a taking of private property under either the State or Federal Constitutions or the taking statutes adopted by the Florida Legislature in 1995. Moratoria, temporary in nature and rationally related to a legitimate governmental purpose, rarely will be found to amount to an unconstitutional taking, particularly in light of the 2002 U.S. Supreme Court decision in *Tahoe*. *See also Penn Central Transp. Co. v. New York City*, 438 U.S. 104 (1978), *Bradfordville Phipps*, 804 So.2d 464.

On April 23, 2002, the U.S. Supreme Court upheld a 32-month moratorium imposed by the Tahoe Regional Planning Agency in order to maintain the status quo during the development of a comprehensive land use plan to address environmental and carrying

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capacity issues confronting that region. *Tahoe-Sierra*, 535 U.S. 302. The Court upheld the agency's interim measures against the landowners' facial challenge that a temporary deferment of use amounted to an unconstitutional "temporary" taking. *Id.* at 1490. In arriving at its decision, the *Tahoe* Court provided useful guidance on how local governments might successfully craft an IDO that will survive an as-applied challenge to its constitutionality.<sup>2</sup> See also, *Bradfordville Phipps*, 804 So.2d 464 (Fla. 1<sup>st</sup> DCA 2001) (upholding a twenty-two month deferral).

In addition to constitutional considerations, however, Florida counties must consider what if any legal exposure they may suffer under the Bert J. Harris, Jr., Private Property Rights Protection Act, Chap. 70.001, *et seq.* *Fla. Stat.* The Harris Act was enacted in 1995 to establish a cause of action, separate and distinct from the law of takings, for property owners whose rights are "inordinately burdened" by an action of a governmental entity. *Fla. Stat.* §70.001(1) & (2). The Act was intended to provide a statutory remedy where the property owner may be foreclosed from a constitutional one. Florida's appellate courts have given the Act very little treatment and its scope remains somewhat murky. However, it appears the Act was not intended to provide a remedy for interim regulations in the nature of the Proposed IDO. *Id.* at §70.001(3)(e).

The Act limits the definition of an "inordinate burden" to one that deems the property owner "*permanently* unable to attain the reasonable, investment-backed expectation for the existing use..." and to "bear[ ] *permanently* a disproportionate share of a burden imposed for the good of the public...". *Id.* (emphasis added). The Act further excludes any "*temporary* impact to real property" from the definition of the "inordinate burden" required to give rise to a cause of action under the Act. *Id.* (emphasis added). Although no published case has taken up the issue of interim measures under the Act, it appears on its face that claims based on the Proposed IDO would be barred.

When the BOCC considers adoption of the Proposed IDO, County staff should explain on the record the purpose of this interim measure, the planning basis for distinguishing between the three tiers, how its adoption will facilitate the comprehensive planning process, and the work plan that will effectuate that process within the 18 to 24 months that the IDO will be in place. Documentation to this effect, including the staff report to the BOCC titled "Implementing Goal 105 and the Carrying Capacity Study," also should be provided.

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<sup>2</sup> Although, in 2001, the Florida Supreme Court held that the temporary closure of two hotels by Florida cities pursuant to nuisance abatement statutes amounted to a temporary taking, that case was overruled by and/or is distinguishable from the *Tahoe* decision. See *Keshbro, Inc. v. City of Miami v. Kablinger*, 801 So.2d 864 (Fla. 2001). The grounds for the *Keshbro* decision were based largely on those expressly rejected by the U.S. Supreme Court in *Tahoe*. See also, *Bradfordville Phipps*, 804 So.2d at 469 ("Reliance upon *First English* for the threshold determination of whether a taking has occurred is ... suspect"). Furthermore, the *Keshbro* court distinguished from the scope of its holding those "prospectively temporary regulations ... in the land use and planning arena, where an entirely different set of considerations are implicated from those in the context of nuisance abatement...". *Id.* at 874.

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Finally, I recommend that the IDO be considered by the BOCC pursuant to the notice and hearing requirements set forth in §125.66(4)(b), F.S. This section describes the adoption procedure required for any ordinance or resolution that changes the "actual list of permitted, conditional, or prohibited uses within a zoning category, or changes the actual zoning map designation of a parcel or parcels of land involving 10 contiguous acres or more...". *Fla. Stat. §125.66(4)(b), see also Sanibel v. Buntock*, 409 So.2d 1073 (Fla. 2<sup>nd</sup> DCA 1981).

If you have any additional questions or wish to discuss the Proposed IDO further, please do not hesitate to call at anytime. It continues to be a pleasure to work with you and the County Commission.

Sincerely,

A handwritten signature in black ink, appearing to read "Tyson Smith". The signature is stylized with a large "T" and a cursive "Smith".

Tyson Smith  
for Freilich, Leitner & Carlisle

## STAFF REPORT

### Interim Development Ordinance The Tier System

1. Staff Memo
2. Questions and Answers – The Tier System
3. Staff Report to the BOCC titled “Implementing Goal 105 and the Carrying Capacity Study”

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June 2, 2003

TO: Board of County Commissioners

FROM: K. Marlene Conaway, Director *KMC*

RE: Interim Development Ordinance (IDO)

**Background**

The Planning Commission, after spending several months reviewing the staff sponsored Tier Maps, became concerned that ROGO and NROGO allocations were being awarded in areas that should be preserved. The drafting of these maps is the first step in implementing the Florida Keys Carrying Capacity Study as required in the Work Program in the 2010 Comprehensive Plan. Public testimony was given and verified by staff that areas initially identified as natural area (Tier I) or low density area (Tier II) have been in some subdivisions substantially developed over the last two years.

The Planning Commission directed staff to come back to the Commission with a draft deferral of NROGO and ROGO allocations for the Planning Commission to recommend to the BOCC. The deferral was to be of sufficient time for staff to prepare amendments to the Comprehensive Plan and LDRs. In discussions with legal council it was decided that an interim development ordinance was the preferred method to use while the habitat preservation mechanisms are being drafted and adopted.

The County is mandated in Florida Administration Rule 28-20.100, the 2010 Comprehensive Plan Work Program, to implement the Florida Keys Carrying Capacity Study by adopting amendments to the Rate of Growth Ordinance, the LDRs, the Future Land Use Maps, maximum permitted densities, to strengthen the protection of terrestrial habitat, develop a strategy for land acquisition and maintain the affordable housing stock. And the County is required to do all this by July 13, 2003!

Goal 105 was adopted by the County to provide a framework for implementing the Carrying Capacity Study and the Rule. Adoption of the Interim Development Ordinance deferring approvals in Tier I and Tier II will demonstrate to the Governor and Cabinet that the County is seriously working towards achieving the required regulatory and policy changes.

**Summary of provisions in IDO**

The Interim Development Ordinance includes the following:

- Designation of boundaries for Tier I, Tier II and Tier III areas.
- Procedures to follow if boundary amendments are needed, while the IDO is in effect.
- ROGO and NROGO allocations received after April 13, 2003 are deferred within Tier I and Tier II areas, new applications will not be accepted after adoption of the ordinance.



- The deferral is for eighteen months, with a possible six-month extension period, to provide sufficient time to draft and adopt the plan and regulation amendments.
- The IDO only effects ROGO and NROGO allocations in Tier I and Tier II, other types of permitting for may continue.
- All vacant buildable lots in Tier I and Tier II will become eligible for ROGO and NROGO dedication points when the IDO is adopted.

### **Discussion**

The IDO is needed to allow the staff sufficient time to complete revisions to the 2010 Comprehensive Plan and the LDRs. Important terrestrial habitat areas are currently receiving allocations for development, which is causing fragmentation of the hammocks. The existing regulations do not provide the tools to effectively protect these areas. One of the major conclusions in the Carrying Capacity Study was the need for protection from the secondary impacts of development. Restoration is another important consideration that is only possible if the fringe areas that are currently receiving only minor negative points are protected.

It is not possible to “tweak” the existing regulations to give the needed protection, while the regulations are being drafted. The flaws are intrinsic to the existing system, which is based on a “lot by lot” evaluation rather than an ecosystem approach. The Tier system used the computer mapping (GIS) tools we currently have available to permit a comprehensive evaluation of the County and decisions to be made of what areas should be developed and what should be protected.

### **Additional Information**

The attached Staff report titled “Implementing Goal 105 and the Carrying Capacity Study” gives a comprehensive summary of the results of the Florida Keys Carrying Capacity Study, requirements in Rule 28-20.100, details of Goal 105 and the methodology to create the Tiers using the GIS. Copies of the proposed Tier Maps and statistics are also in the report.

Hopefully the Question and Answer sheet also attached will be helpful in clearing up any remaining questions about using the Tier system as a basis for regulating future development.

The legal analysis by Tyson Smith was requested and is included in this packet so that the Board has sufficient assurance that enactment of the IDO will not put the County in undo exposure for property rights.

### **Planning Commission Recommendations**

The Planning Commission reviewed the staff recommendation and made the following changes to the draft ordinance:

1. The Planning Commission reviewed the proposal to defer allocations in Tier I only and after taking public comment, voted to recommend the deferral for both Tier I and Tier II.

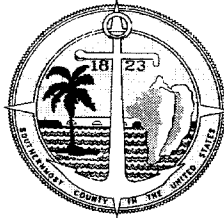
2. They also recommended that the original staff proposal be amended to make both Tier I and Tier II eligible for land dedication under Section 9.5.122.3(a)(5) and Section 9.5-124.8(a)(3).
3. They increased the deferral period from one year to two years with the possibility of a 180-day extension or until regulations are adopted.

**Staff Recommendation**

Staff, after considering the Planning Commission recommendations, join them in recommending that the Board of County Commissioners adopt an Interim Development Ordinance deferring allocations within the boundaries of Tier I and Tier II, and having both Tiers be eligible for land dedication. However, Staff recommends that the deferral be for eighteen months, with the possibility of extension for an additional six months, rather than two years. The longer time frame should not be necessary and may actually delay the passage of the final regulations.

Staff recommends approval of the attached Interim Development Ordinance.

**Growth Management**  
2798 Overseas Highway  
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Marathon, Florida 33050  
Voice: (305) 289-2500  
FAX: (305) 289-2536



**Board of County Commissioners**  
Mayor Dixie Spehar, Dist. 1  
Mayor Pro Tem Murray Nelson, Dist. 5  
Comm. Charles "Sonny" McCoy, Dist. 3  
Comm. George Neugent, Dist. 2  
Comm. David P. Rice Dist. 4

## **Questions and Answers**

### **The Tier System**

#### **1. Why map the Florida Keys into the Tier system?**

The Tier system concept was adopted in Goal 105 of the Comprehensive Plan to provide a framework to implement the Carrying Capacity Study. Through this system, utilizing computer mapping (GIS), the difference between areas appropriate for additional development and those, which are important environmentally, are identified. By doing this evaluation up front property owners will know the development suitability of their property and the shortcomings with the current expensive and time consuming lot by lot analysis will no longer be an issue.

#### **2. Do we have to use the Tier system to implement the Carrying Capacity Study?**

The existing ROGO point system and regulations could possibly be amended to implement the Carrying Capacity Study. However, the system is already cumbersome, subject to constant arguments and second-guessing, and very bureaucratic to implement. Adding more regulations to implement the Carrying Capacity Study will only increase the problems already inherent in the system. In comparison the Tier system is elegant, the majority of the review was accomplished when the maps were created. The required protection of the important areas of terrestrial habitat identified in the Carrying Capacity Study are considered and appropriate areas for development indicated. The Tier system also provides clarity and assurance for property owners of the development potential of their property and focuses public acquisition funds for conservation and retirement of property rights.

#### **3. How can designating the vacant land in the Keys into either Tier I, II or III simplify the permitting system?**

The existing ROGO system has 18 different evaluation criteria. Review is done on a lot by lot basis, including environmental site visits and is costly to both the applicant and the county. The existing evaluation criteria for infill and environmental was used to designate the Tiers.

Tier I contains the high and moderate quality hammocks, endangered species habitat and buffer areas as identified in the Carrying Capacity Study.

Tier II contains fragmented hammocks and habitat and/or subdivisions less than 50% built.

Tier III are subdivisions appropriate for additional development.

With the environmental and planning review completed up front during the drafting of the Tier maps, the scoring and application review becomes a simple administrative process.

**4. Will designation of a Tier System increase the County's legal exposure for property rights?**

The Rate of Growth establishes how many permits may be issued each year, this will not change with the designation of tiers. The existing exposure from the large number of legally platted lots will not be increased, but the maps will make it clear where permitting will be easiest. Most of the properties mapped as Tier I currently have major negative points under the existing ROGO evaluation system. Any additional properties included in Tier I are buffer and/or restoration areas, which are identified in the Carrying Capacity study as important to the carrying capacity of the terrestrial environment. The County is required to implement the Carrying Capacity in Florida Administrative Rule 28-20.100.

**5. Are the Tier boundaries "correct", can changes be made after the Interim Development Ordinance is adopted?**

The boundaries were drawn using environmental and development information and digital data from the Planning Department and the Property Appraisers Office. The County Biologists, Planners, Land Steward and Land Authority Director reviewed this information and provided input. The maps were also displayed at a number of community meetings and reviewed by different environmental and community groups. All requests for changes have been individually reviewed and changes made to the maps where appropriate.

The proposed Interim Development Ordinance provides a way to change the maps after review by the Department of Planning and the Planning Commission.

**6. Should additional areas be included in Tier I?**

Tier I includes all contiguous hammock areas above four acres and restoration areas between fragmented hammocks to increase the hammock size and buffers where possible. Hammock size is a major determinate of habitat quality according to the Carrying Capacity study, which is why size and connectivity were used to identify the best and most important terrestrial habitat areas for preservation. Tier II contains smaller hammock patches isolated by surrounding development. They are considered "all edge" in some studies, which means the quality is reduced because of the negative secondary impacts of development. But they do provide habitat for songbirds and small animals and contribute to the quality of the neighborhoods. Both Tier I and Tier II areas are designated as future acquisition areas.

**7. Why are areas included in Tier III that can not currently receive a building permit for new construction?**

The Comprehensive Plan and the LDRs consist of ROGO and NROGO to allocate permits for new construction. Other regulations and policies control clearing, open space and in some

instances if new development can be permitted. The Tier system changes the ROGO and NROGO allocation process and will modify some of the other regulations, but most of the protective regulations will continue. For example, there are “red flag” wetland lots included in Tier III; these wetlands are 100% protected (no fill permitted) in the Comprehensive Plan and LDRs. Continuous areas are mapped in the Tiers for ease of identification. Because these lots are randomly scattered through out the County and will continue to be completely protected under the regulations it was determined that mapping them would only tend to make the maps confusing and difficult to use.

The area restricted by the U.S. Navy Air Installation Compatible Use Zone (AICUZ) is another example of how the regulations modify the Tier system. Development in this over-lay are controlled by the AICUZ.

#### **8. Why three tiers, instead of two – one for development, one for acquisition?**

Everything is not black and white, Tier II provides for an intermediate choice. The areas of habitat designated Tier II are not as environmentally sensitive as Tier I, but contain isolated hammock patches of less than four acres. These areas provide resting-places for migrating birds, habitat for small animals and some species of songbirds. The subdivisions included in Tier II without habitat are those that are less than 50% developed. By not considering them as infill areas, sprawl is reduced and the costs not incurred to provide public services to these areas. The undeveloped areas designated Tier II also provides opportunities for decisions to be made during the Livable CommuniKeys Program to determine how and if these areas should be allowed to develop in the future.

#### **9. Should the Tier system be adopted before the LCP master plans are written?**

The designation of lands for the Tier System under the Smart Growth Program is based upon a comprehensive evaluation of the natural systems (Carrying Capacity Study) and development patterns on a county-wide basis. The Tier System does not directly address or specify any land use designations, standards for development intensity and density or the location of future public facilities. Such site-specific planning decisions are under the purview of the Livable CommuniKeys Program. The Tier System provides a framework for future LCP decisions by designating areas where development should not occur. The LCP determines how areas appropriate for additional development should be developed.

PLANNING COMMISSION RESOLUTION  
NO. P26-03

Recommending Approval  
Of the Interim Development Ordinance  
And the Boundaries of the Draft Tier Maps

**RESOLUTION NO. P26-03**

A RESOLUTION BY THE MONROE COUNTY PLANNING COMMISSION RECOMMENDING APPROVAL TO THE BOARD OF COUNTY COMMISSIONERS OF THE REQUEST FILED BY THE PLANNING DEPARTMENT DESIGNATING TIER MAPS AND ADOPTING INTERIM DEVELOPMENT REGULATIONS DEFERRING ROGO AND NROGO ALLOCATIONS IN TIER I and TIER II AREAS UNTIL LDR AND COMPREHENSIVE PLAN AMENDMENTS IMPLEMENTING THE CARRYING CAPACITY STUDY ARE DRAFTED AND ADOPTED BY THE COUNTY COMMISSION OR TWO YEARS, WHICHEVER COMES FIRST.

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**WHEREAS**, the Monroe County Year 2010 Comprehensive Plan in Goal 102 requires Monroe County to direct future growth to lands most suitable for development and to conserve and protect environmentally sensitive lands and Objective 102.3 requires that new development occur where site disturbances and man's activities have fewer adverse effects on natural vegetation; and

**WHEREAS**, the Florida Administrative Commission in 1996 enacted Rule 28-20.100, which created the "Work Program" in the 2010 Comprehensive Plan and required, among other things, the preparation of a Carrying Capacity Study for the Florida Keys; and

**WHEREAS**, Year 6 (July 13, 2002 through July 12, 2003) of the "Work Program", section C., requires the County to implement the Carrying Capacity Study by the adoption of all necessary plan amendments to establish development standards to ensure that new development does not exceed the carrying capacity of the county's environment; and

**WHEREAS**, the "Work Program", section F. directs the County to initiate and complete a collaborative process for the adoption of Land Development Regulations (LDR) and Plan amendments to strengthen the protection of terrestrial habitat; and

**WHEREAS**, the Carrying Capacity Study, completed in September 2002, concluded "that land development in the Florida Keys has surpassed the capacity of upland habitats to withstand further development"; and

**WHEREAS**, Goal 105, "Smart Growth", was adopted by the Board of County Commissioners in 2001 to provide a framework within the 2010 Comprehensive Plan to implement the Carrying Capacity Study; and

**WHEREAS**, Objective 105.2 of the 2010 Comprehensive Plan directs the County to map and designate land within the Florida Keys into three categories – Natural Area, Transition and Sprawl Reduction Area, and Infill Area; and

**WHEREAS**, the Tier Maps were drafted based on the requirements and scientific findings of the Carrying Capacity Study, Rule 28-20.100 and Goal 105; and

**WHEREAS**, the draft Tier Maps have been reviewed at public workshops in the upper Keys on January 21 and February 6, 2003 and on February 19, 2003 in the lower Keys and at Planning Commission meetings. Revisions have been made to these maps based on the public input, further analysis, and site investigations; and,

**WHEREAS**, the LDR and Comprehensive Plan amendments to implement the protection of the terrestrial ecosystem requirements in Rule 28-20.100 are incomplete and will not be prepared and adopted by July 13, 2003, deadline and the loss of valuable native habitat is continuing as development in these areas continue; and

**WHEREAS**, the Planning Commission at a regular meeting on March 13, 2003, directed staff to move forward and prepare a recommendation to the Board of County Commissioners for a deferral of ROGO and NROGO allocations, while staff prepares amendments to the 2010 Comprehensive Plan and the LDRs to further protect the terrestrial ecosystem; and

**WHEREAS**, this deferment will protect the natural environment while providing additional time to incorporate a comprehensive legal and financial review of the proposed amendments and to identify dedicated funding sources for land acquisition; and

**WHEREAS**, this deferment will be a demonstration of good faith to the Governor and Cabinet that the County is seriously working towards implementing the Carrying Capacity Study and Rule 28-20.100 and should be considered in substantial compliance in meeting the Work Program goals; and

**WHEREAS**, the Planning Commission reviewed the Interim Development Ordinance in public hearing on May 7, 2003.

**WHEREAS**, The Planning Commission was presented with the following evidence, which by reference is hereby incorporated as part of the record of said hearing;

1. Staff report prepared on April 23, 2003 by K. Marlene Conaway, Director, Planning and Environmental Resources; and
2. The report titled Report to the Planning Commission Implementing Goal 105 and the Carrying Capacity Study Tier Maps; and
3. County-wide draft Maps dated May 6, 2003 designating Tier I, II and III.



4. Proposed text for Board of County Commissioners Interim Development Ordinance; and
5. The sworn testimony of the Growth Management Staff; and
6. Advice from John Wolfe, the Planning Commission Counsel; and
7. Comments by the public.

**WHEREAS**, the Planning Commission has made the following Conclusions of Law based on the evidence and comments presented:

Based on the Monroe County Year 2010 Comprehensive Plan, we find that the proposed Interim Development Ordinance is consistent with its goals, objectives and policies set forth in the Plan. **NOW THEREFORE**;

**BE IT RESOLVED BY THE PLANNING COMMISSION OF MONROE COUNTY, FLORIDA**, that the preceding support its decision to recommend **APPROVAL** to the Board of County Commissioners of following:

**Section 1:** Pursuant to Policy 105.2.1, Year 2010 Comprehensive Plan, Natural Areas (Tier I), Transition Areas (Tier II), and Infill Areas (Tier III) are hereby designated, the boundaries, which are described in the following maps, attached hereto, are made part of this ordinance. During the period these interim development regulations are in effect, boundaries may be amended by resolution of the Board of County Commissioners upon the recommendation of the Planning Commission based upon data and considerations used originally to draft the Tier Maps. This shall not be construed to foreclose changes or additions to the original criteria used to determine the Tiers.

**Section 2:** Pursuant to the pending legislation doctrine set forth in Smith vs. City of Clearwater 383 So. 2d 681 (FL, 2nd DCA, 1980) the Board of County Commissioners establishes interim regulations in Sections 3, 4, and 5 of this Ordinance that shall remain in full force and effect until either amendments to the Year 2010 Comprehensive Plan and Land Development Regulations are drafted and adopted by the County Commissioners to implement the Florida Keys Carrying Capacity Study and Goal 105 (Tier Map Overlays) of the Comprehensive Plan or two-years, whichever comes first. Prior to the two-year sunset date of this ordinance, the Board of County Commissioners, upon the recommendation of the Planning Commission, may amend this ordinance to extend its provisions an additional 180 days.

**Section 3:** No ROGO or NROGO allocation awards shall be made on any applications within Tier I or Tier II areas with a ROGO/NROGO entry date of March 13, 2003, or later.

**Section 4:** No further ROGO or NROGO applications within Tier I and Tier II areas shall be accepted or processed by the Growth Management Division effective the date of this ordinance.

**Section 5:** All buildable vacant lands within Tier I and Tier II areas shall qualify for a ROGO and NROGO land dedication under Section 9.5.122.3(a)((5) and Section 9.5-124.8(a)(3), Monroe County Code, effective the date of this ordinance.

**Section 6:** The County Administrator is directed to have the Growth Management Division immediately begin preparing the draft text and map amendments and other supporting studies in cooperation with the Planning Commission.

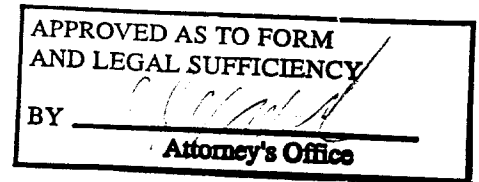
**PASSED AND ADOPTED** By the Planning Commission of Monroe County, Florida, at a regular meeting held on the 7<sup>th</sup> day of May 2003.

Chair David C. Ritz  
Vice Chair Denise Werling  
Commissioner Julio Margalli  
Commissioner Jerry Coleman  
Commissioner Alicia Putney

YES  
YES  
YES  
YES  
YES

PLANNING COMMISSION OF MONROE COUNTY, FLORIDA

BY David C. Ritz  
David C. Ritz, Chair 5/28/03



Development Review Committee Resolution  
NO. D9-03

Recommending Approval  
Of the Interim Development Ordinance  
And the Boundaries of the Draft Tier Maps

**RESOLUTION NO. D9-03**

AN RESOLUTION BY THE MONROE COUNTY  
DEVELOPMENT REVIEW COMMITTEE  
RECOMMENDING A DESIGNATION OF NATURAL  
AREAS (TIER I) AND INTERIM DEVELOPMENT  
REGULATIONS DEFERRING ROGO AND NROGO  
ALLOCATIONS IN TIER I AREAS UNTIL LDR AND  
COMPREHENSIVE PLAN AMENDMENTS  
IMPLEMENTING THE CARRYING CAPACITY  
STUDY ARE DRAFTED AND ADOPTED BY THE  
COUNTY COMMISSION OR ONE YEAR,  
WHICHEVER COMES FIRST.

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**WHEREAS**, the Monroe County Year 2010 Comprehensive Plan (2010 Plan) in GOAL 102 requires Monroe County to direct future growth to lands most suitable for development and to conserve and protect environmentally sensitive lands and Objective 102.3 requires that new development occur where site disturbances and man's activities have fewer adverse effects on natural vegetation; and

**WHEREAS**, the Florida Administrative Commission in 1996 enacted Rule 28-20.100, which created the "Work Program" in the 2010 Comprehensive Plan. The Work Program required, among other things, the preparation of a Carrying Capacity Study for the Florida Keys; and

**WHEREAS**, Year 6 (July 13, 2002 through July 12, 2003) of the "Work Program", section C., requires the County to implement the Carrying Capacity Study by the adoption of all necessary plan amendments to establish development standards to ensure that new development does not exceed the carrying capacity of the county's environment; and

**WHEREAS**, the "Work Program", section F. directs the County to initiate and complete a collaborative process for the adoption of Land Development Regulations (LDRs) and Plan amendments to strengthen the protection of terrestrial habitat; and

**WHEREAS**, the Carrying Capacity Study, completed in September 2002, concluded "that land development in the Florida Keys has surpassed the capacity of upland habitats to withstand further development"; and

**WHEREAS**, Goal 105 Smart Growth was adopted by the Board of County Commissioners in 2001 to provide a framework within the 2010 Comprehensive Plan to implement the Carrying Capacity Study; and

**WHEREAS**, Objective 105.2 of the Plan directs the County to map and designate land within the Florida Keys into three categories – Natural Area, Transition

and Sprawl Reduction Area, and Infill Area; and

**WHEREAS**, the Tier Maps were drafted based on the requirements and scientific findings of the Carrying Capacity Study, Rule 28-20.100 and Goal 105; and

**WHEREAS**, the draft Tier Maps have been reviewed at public workshops in the upper and lower Keys and at Planning Commission meetings. Revisions to the maps have been made where errors in data were identified; and

**WHEREAS**, the LDR and Comprehensive Plan amendments to implement the protection of the terrestrial ecosystem requirements in Rule 28-20.100 are incomplete and will not be reviewed and adopted by July 13, 2003, deadline and the loss of valuable native habitat is continuing as development in these areas continue; and

**WHEREAS**, the Planning Commission at a regular meeting on March 13, 2003, directed staff to move forward and prepare a recommendation to the Board of County Commissioners for a deferral of ROGO and NROGO allocations to areas with negative environmental points while the staff prepares amendments to the 2010 Comprehensive Plan and the LDRs to further protect the terrestrial ecosystem; and

**WHEREAS**, this deferment will protect the natural environment while providing additional time to incorporate a comprehensive legal and financial review of the proposed amendments and to identify dedicated funding sources for land acquisition; and

**WHEREAS**, this deferment will be a demonstration of good faith to the Governor and Cabinet that the County is seriously working towards implementing the Carrying Capacity Study and Rule 28-20.100 and should be considered in substantial compliance in meeting the Work Program goals; and

**NOW THEREFORE, BE IT RESOLVED BY THE DEVELOPMENT REVIEW COMMITTEE OF MONROE COUNTY, FLORIDA**, to recommend **APPROVAL** to the Monroe County Planning Commission of the following as requested by the Monroe County Planning Department:

1. Designate Natural Areas (Tier I) as represented in the Planning and Environmental Resources Department Tier Maps.
2. Defer ROGO or NROGO allocation awards within Tier I areas with a ROGO/NROGO entry date of March 13, 2003, or later.
3. Do not accept further ROGO or NROGO applications within Tier I areas effective the date of this ordinance.
4. Make all vacant lands within Tier I areas eligible for a ROGO and NROGO land dedication under Policy 101.5.4(5) and 101.5.5(4)

**PASSED AND ADOPTED** By the Development Review Committee of Monroe County, Florida at a regular meeting held on the 14th day of April, 2003.

Fred Gross, Director, Lower Keys Planning Team (Chair)	<u>YES</u>
K. Marlene Conaway, Director	<u>YES</u>
Ralph Gouldy, Environmental Resources Senior Administrator	<u>YES</u>
Department of Health (by fax)	<u>YES</u>
Department of Public Works (by fax)	<u>YES</u>
Department of Engineering (by fax)	<u>YES</u>

DEVELOPMENT REVIEW COMMITTEE OF MONROE COUNTY, FLORIDA

By   
Fred Gross, DCR Chair

Signed this 17<sup>th</sup> day of April, 2003